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OFFICE OF PETITIONS

In re Application of :
BALASURIYA, SENAKA :
Application No. 10/034,794 : DECISION ON PETITION
Filed: 12/28/2001 :
Attorney Docket No. 33692.01.0023 :
:

This is a decision on the petition under 37 CFR 1.137(a) filed January 7, 2010, which is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment for the above-identified application.

On February 19, 2009, the Office mailed a final rejection which set a three month non-statutory period for reply. On May 19, 2009, applicant filed a timely and proper reply in the form of a notice of appeal and Pre-Brief Request for Review. On August 7, 2009, the Office mailed a Notice of Panel Decision from Pre-Appeal Brief Review ("Decision") in response to the Pre-Appeal Brief Request for Review filed May 19, 2009. The Decision stated that the time period for filing an appeal brief would be reset to be one month from mailing the decision, or the balance of the two-month time period running from the receipt of the notice of appeal, whichever was greater. The Decision further indicated that the time period for filing of the appeal brief was extendible under 37 CFR 1.136 based upon the mail date of the decision or the receipt date of the notice of appeal, as applicable. On December 7, 2009, applicant submitted an appeal brief accompanied by a request for an extension of time for response within the third month (and fee). On December 9, 2009, the Office mailed a Notice of Abandonment, stating that the application is abandoned in view of applicant's failure to timely file a proper reply to the Office letter mailed on February 19, 2009.

In the present petition, applicant asserts that the application was improperly held abandoned. Applicant requests that the Office withdraw the holding of abandonment, refund the petition fee, and return the application to pending status.

The Office finds that applicant's assertion is correct. As previously stated, applicant filed a timely and proper reply to the final rejection in the form of a notice of appeal and Pre-Brief Request for Review. Furthermore, the Decision reset a one-month extendible period from August 7, 2009 (the mail date of the decision), for applicant to submit an appeal brief. Therefore, applicant timely filed the appeal brief, the request for an extension of time for response within the third month, and the requisite fees within the extendible period set in the Decision. Accordingly, the petition under 37 CFR 1.181 is granted. The holding of abandonment is hereby withdrawn and the application is returned to pending status.

The \$540.00 petition fee is unnecessary and will be refunded in due course.

This matter is being referred to the Technology Center Art Unit 2457 for further action consistent with this decision.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

C. T. Donnell

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